Supreme Court, U.S.
FILED
SEP 8 1987
JOSEPH F. SPANIOL, JR.

No. 87-79

In the Supreme Court of the United States

OCTOBER TERM, 1987

JOHN O. MCELVEY, JR. AND
TERRENCE L. MCCLAIN, PETITIONERS

v.

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-79

JOHN O. MCELVEY, JR. AND
TERRENCE L. MCCLAIN, PETITIONERS

v.

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners contend that the Federal Aviation Administration violated their due process rights in removing them from their jobs as air traffic controllers.

As petitioners recognize (Pet. 4, 17-18), this case is substantially identical to *Darnell* v. *Department of Transportation*, 807 F.2d 943 (Fed. Cir. 1986), petition for cert. pending, No. 86-1746, and the contentions presented by petitioners here are not materially different from the claims presented in the *Darnell* petition. For the reasons stated in our brief in opposition in that case,* further review of petitioners' claims is not warranted.

Respectfully submitted.

CHARLES FRIED
Solicitor General

SEPTEMBER 1987

* We have provided petitioners' counsel with a copy of our brief in *Darnell*.